APPENDIX A

SUPREME COURT OF KENTUCKY

97-SC-618-D

On Review From Court Of Appeals
Nos. 91-CA-205-MR, 95-CA-1236-MR,
95-CA-1237-MR, & 95-CA-2439-MR
Fayette Circuit Court No. 88-CI-424

JAMES HUNT BARKER - - - - - - - *Movant*

v.

MARY JO LEEDS, Et Al. - - - - *Respondents*

ORDER

Movant's belated motion for an enlargement of time in which to file a motion for discretionary review in the above-styled action is denied.

Wintersheimer, Cooper, Graves, and Johnstone, JJ., sitting.

All concur.

ENTERED: October 23, 1997

/s/ _____
Chief Justice

APPENDIX B

COMMONWEALTH OF KENTUCKY
COURT OF APPEALS

No. 91-CA-205-MR

JAMES HUNT BARKER - - - - - - *Appellant*

v.

MARY JO LEEDS, Et Al. - - - - *Appellees*

Appeal From Fayette Circuit Court
Action No. 88-CI-424

AND
No. 95-CA-1236-MR
JAMES HUNT BARKER, ET AL., APPELLANTS
v.
MARY JO LEEDS, ET AL., APPELLEES
Appeal From Fayette Circuit Court
Action No. 88-CI-424

AND
No. 95-CA-1237-MR
JAMES HUNT BARKER, ET AL., APPELLANTS
v.
MARY JO LEEDS, ET AL., APPELLEES
Appeal From Fayette Circuit Court
Action No. 88-CI-424

AND
No. 96-CA-2439-MR
JAMES HUNT BARKER, ET AL., APPELLANTS
v.
BILLIE BELL, ET AL., APPELLEES
Appeal From Fayette Circuit Court
Action No. 88-CI-424

ORDER

BEFORE: WILHOIT, CHIEF JUDGE; GUDGEL AND GUIDUGLI, JUDGES.

Pursuant to this Court's order entered January 9, 1997, a show cause hearing was held on March 4, 1997, to assist the Court's disposition of motions for sanctions filed by appellee, First Security National Bank and Trust Company of Lexington (now Bank One, Lexington N.A.) and by appellees Charities.[1] Appellant, James Hunt Barker, and his counsel, William Lloyd Turner, appeared, as well as counsel for the moving appellees. Pro se appellee, W. Henry Graddy IV, also appeared.

The Court has considered appellees' motions for sanctions and the arguments made at the hearing and, being sufficiently advised, ORDERS the motions be GRANTED.

A brief history of the action below is necessary to establish the background of the matter at bench. The action below is a will contest which started in 1988. The trial was not conducted as the parties informed the court they had reached a settlement. However, about a month after the settlement was reached, but before it was memorialized in written form, appellant informed his attorneys that he was cancelling their authority to settle the case. The appellees moved the Fayette Circuit Court for enforcement of the agreement and entry of a judgment. Their motion was granted. This Court affirmed (case No. 91-CA-0205-MR), holding that the evidence supported the finding that appellant had settled the case and that his attorneys had acted within the scope of their authority when they negotiated the settlement. The Kentucky Supreme Court denied discretionary review. The judgment became final on April 14, 1993. Appellant subsequently filed two motions pursuant to CR 60.02 which were both denied. One of those

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[1] Appellees Blue Grass Council of the Blind, Lexington Braille Guild, American Council of the Blind, and Guiding Eyes for the Blind are herein collectively referred to as the Charities.

motions resulted in the filing of two duplicate appeals (cases No. 95-CA-1236-MR and No. 95-CA-1237-MR) which were dismissed due to appellant's failure to meet the time requirements of CR 76.03. The other motion resulted in yet another appeal (case No. 96-CA-2439-MR) which was dismissed due to appellant's failure to name indispensable parties.

In addition, the record shows that appellant further attempted to have the final judgment of April 14, 1993, set aside by initiating two federal suits; one federal appeal; two collateral attacks in the Fayette District Court; two appeals in the Fayette Circuit Court; and a third motion pursuant to CR 60.02 in the Fayette Circuit Court.

The appellees' motions for sanctions and the oral hearing were prompted by what appellant and his counsel characterized as motions to set aside judgment pursuant to CR 60.02 which were filed in this Court in appeals No. 91-CA-205-MR, No. 95-CA-1236-MR, and 95-CA-1237-MR. The argument made in the motions was that the Fayette Circuit Court lacked subject matter jurisdiction to enter the original judgment, thereby rendering that judgment void ab initio. The argument expanded into a further statement that the Court of Appeals itself lacked jurisdiction to review the judgment, which rendered its opinion void.

Appellant himself invoked the jurisdiction of the Fayette Circuit Court when he filed his action as well as his numerous post-judgment motions. Appellant himself invoked the jurisdiction of this Court when he filed his appeals. There can be no question that the circuit court had subject matter jurisdiction to hear this will contest and that this Court had jurisdiction to review the circuit court's judgment disposing of the action. Appellant's jurisdictional challenge is utterly meritless. Likewise, his actions since 1993, with the assistance of counsel, were taken in complete disregard of the law of the case and of res judicata, and have been nothing but relentless abuse of the judicial system and harassment of the appellees.

Appellant and his counsel appear to believe that their latest motions presented a rational argument to the Court.

However, their belief cannot be the basis for this Court's determination as to whether their motions are frivolous. Such a determination may only be made objectively on the basis of the record. Leasor v. Redmon, Ky., 734 S.W.2d 462, 464 (1987). In view of the case history related above, it is clear that the record speaks for itself. We conclude that the motions filed by appellant, James Hunt Barker, and by his counsel, William Lloyd Turner, are so totally lacking in merit that they appear to have been taken in bad faith. The motions are frivolous and, therefore, sanctions are warranted.

CR 73.02(4) provides that the Court may award just damages and single or double costs to the moving appellees. The appellees shall have fifteen (15) days from the date of entry of this order in which to submit their counsel's affidavit of the totality of the damages and costs they incurred in responding to the frivolous motions and in seeking affirmative relief therefrom. James Hunt Barker and William Lloyd Turner will then each have fifteen (15) days from the date of filing of the last appellee's affidavit in which to respond. The affidavits and the responses shall be filed in quintuplicate.

Upon filing of the responses, or at the expiration of thirty (30) days, the Court shall dispose of the matter by further order. In setting the amount of the sanctions, the Court will remain mindful of the fact that the frivolous motions are only the most recent illustrations of a protracted pattern of abuse and waste of judicial and legal resources.

The Clerk of the Court of Appeals is DIRECTED to mail a copy of this order by U.S. Certified Mail with Return Receipt Requested to James Hunt Barker and to William Lloyd Turner.

ENTERED: MAR 18 1997

/s/ _____
Chief Judge, Court of Appeals

APPENDIX C

COMMONWEALTH OF KENTUCKY
COURT OF APPEALS

No. 91-CA-205-MR

JAMES HUNT BARKER - - - - - *Appellant*

v.

MARY JO LEEDS, Et Al. - - - - *Appellees*

Appeal From Fayette Circuit Court
Action No. 88-CI-424

AND
No. 95-CA-1236-MR
JAMES HUNT BARKER, ET AL., APPELLANTS
v.
MARY JO LEEDS, ET AL., APPELLEES
Appeal From Fayette Circuit Court
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AND
No. 95-CA-1237-MR
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BILLIE BELL, ET AL., APPELLEES
Appeal From Fayette Circuit Court
Action No. 88-CI-424

ORDER

BEFORE: WILHOIT, Chief Judge; GUDGEL and GUIDUGLI, Judges.

This is before the court for consideration of affidavits filed by the appellees pursuant to this court's March 18, 1997, order. The affidavits specify the costs and damages incurred by the appellees in responding to the latest attempts by the appellant, James Hunt Barker, to challenge a Fayette Circuit Court judgment entered December 11, 1990.

In his latest bids to attack the December 1990 circuit court judgment, the appellant claims that the circuit court lacked subject matter jurisdiction to enter the judgment. He also contends that this court, which affirmed the judgment by opinion rendered November 13, 1992, likewise lacked subject matter jurisdiction over the appeal and that the opinion is therefore void. The appellant furnishes a myriad of legal citations regarding subject matter jurisdiction, but does not explain their relevancy to this litigation except to state that this court does not have jurisdiction of an appeal from a consent judgment. The appellant misconstrues the concept of subject matter jurisdiction. Subject matter jurisdiction was explained in *Duncan* v. *O'Nan*, Ky., 451 S.W.2d 626 (1970). Quoting from *In re Estate of Rougeron*, 17 N.Y.2d 264, 271, 270 N.Y.S.2d 578, 583, 217 N.E.2d 639, 643, (1966) the court stated as follows:

> In other words the rule that subject-matter jurisdiction cannot be born of waiver, consent or estoppel has to do with those cases only where the court has not been given any power to do anything at all in such a case, as where a tribunal vested with civil competence attempts to convict a citizen of a crime. In other words, "subject matter" does not mean "this case" but "this kind of case."

Duncan, 451 S.W.2d at 631. The circuit court had subject matter jurisdiction over the will contest action and this court had subject matter jurisdiction over the appeal of the final judgment in the will contest action. Both the circuit

court and this court had subject matter jurisdiction over "this kind of case." *See id.* The authorities cited by the appellant in support of his argument that this court lacked jurisdiction over an appeal of a consent judgment pertain to the limited, authority of a court to modify a settlement agreement. The settlement agreement was not modified by the circuit court or by this court. The findings of fact and conclusions of law accompanying the entry of the December 1990 circuit court judgment related to whether there existed an enforceable settlement. The issues on appeal of the judgment concerned the sufficiency of the evidence to support the circuit court's findings that will contest action was settled and that the appellant's attorneys acted within the scope of their authority. The appeal was not from a consent judgment, but from a judgment which enforced a settlement agreement. Review of the circuit court order by this court was proper. *See, e.g., Keach* v. *Keach,* 217 Ky. 723, 290 S.W. 708 (1927); *Karnes* v. *Black,* 185 Ky. 410, 215 S.W. 191 (1919).

The time for the conclusion of this litigation is long past due. In its order entered July 26, 1996, the circuit court succinctly explained the reasons that the grounds alleged in the appellant's CR 60.02 motion did not justify the extraordinary relief provided by that rule. No other grounds advocated by the appellant in this court or other courts warrant setting aside the circuit courts December 11, 1990, judgment or this court's November 13, 1992, opinion. *See, e.g., Gross* v. *Commonwealth,* Ky., 648 S.W.2d 853 (1983); *Yocum* v. *Bratcher,* Ky., 578 S.W.2d 44 (1979); *Beazley* v. *Mershon,* 69 Ky. (6 Bush) 424 (1869).

This court, in its order of March 18, 1997, found that the latest motions filed by the appellant, James Hunt Barker, are so totally lacking in merit that they appear to have been taken in bad faith. The appellees' attorneys filed affidavits with the court verifying the amount of damages and costs incurred in litigating the latest round of proceedings. The response filed by the appellant does not contest the reasonableness of the amounts claimed by the

appellees; rather, the pro se response discloses the appellant's difficulties with his counsel and reiterates arguments previously advanced.

This matter is hereby REMANDED to the circuit court for the entry of a judgment against James Hunt Barker in favor of the appellee, First Security National Bank & Trust Company of Lexington, in the amount of $8,458.00. The circuit court shall also enter a judgment against James Hunt Barker in favor of the "Charities" in the amount of $1,424.00. The circuit court may use all proper means to enforce the judgments.

The motion filed by W. Henry Graddy, IV, for an enlargement of time to file a response is DENIED. The relief sought by Mr. Graddy, stated in his notice of order of garnishment, lies within the discretion of the circuit court.

/s/ _____
Chief Judge, Court of Appeals

ENTERED: JUN 19 1997